COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 138 OF 2004 (S/B)

Dr. Neelam Kandari W/o Dr. O.S. Kandari,
Medical Officer, Government Suman Hospital
Narendra Nagar, Tehri Garhwal

..... **Petitioner**

Versus

1. State of Uttaranchal through Secretary, Medical & Health, Uttaranchal Shasan, Dehradun
2. Chief Medical Officer, Joint Hospital, Roorkee, District Hardwar
3. Director General of Medical & Health, Uttaranchal, Dehradun

..... **Respondents**

Shri V.B.S. Negi Advocate for the petitioner.
Sri Subhash Upadhyaya, learned standing counsel for the State of Uttaranchal.

Dated: March 01, 2006

Coram: Hon. P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the adverse report of the petitioner for the year 2002-03 as communicated to her on 17.05.2004 (Annexure No.5 to the writ petition).

2. Brief facts of the case as narrated by the petitioner are that she is a medical officer appointed in the year 1981 under the Provincial Medical Service, Uttar

Pradesh and has been finally allocated to the State of Uttaranchal under Section 73 of the U.P. Reorganization Act ***(hereinafter will be referred to as the Act).*** The grievance of the petitioner is that in th year February, 2004, the State of Uttaranchal promoted the various medical officers to Class-I post. The said result of the promotion to Class-I post in the Medical Department of Uttaranchal was published in the daily newspaper 'Amar Ujala' dated 24.02.2004. The petitioner after looking the said result came to know that she has been superseded and her juniors have been given the promotion. Thereafter, the petitioner made several representations dated 01.03.2004, 15.05.2004 and 17.05.2004 to know the reasons for his supersession. Thereafter, on 17.05.2004, the Respondent No.3 communicated a letter to the petitioner that an adverse entry for the year 2002-03 was on record, therefore, she was superseded. The adverse entry was communicated to the petitioner on 17.05.2004 after making of her representations. This adverse entry was never communicated to the petitioner earlier than 17.05.2004 and this fact has not been challenged by the State in the counter affidavit. Hence, it is an admitted fact an uncommunicated entry was taken into account and the petitioner was superseded.

3. The U.P. Government Servants (Disposal of Representation against Adverse Annual Confidential Reports & Allied Matters) Rules, 1995 deals with the adverse entries and disposal of the representation against the adverse entry. Rule-4 of the Rules of 1995 referred above provides that where a report in respect of a Government Servant is adverse or critical, wholly or in part, hereinafter referred to as adverse report, the whole of the report shall be communicated in writing to the Government Service concerned by the accepting

authority or by an officer not below the rank of reporting authority nominated in this behalf by the accepting authority, within a period fo 45 days from the date of recording the report a certified to this effect shall be recorded in the report. A Government Servant may, within a period of 45 days from the date of communication of adverse report under sub-rule (1), represent in writing directly and also through proper channel to the authority one rank above the accepting authority, hereinafter referred to as the competent authority, and if there is no competent authority, to the accepting authority itself, against the adverse report so communicated. Sub-rule (3) provides that the competent authority or accepting authority, as the case may be, shall within a period not exceeding one week from the date of receipt of the representation under sub-rule (2), transmit the representation to the appropriate authority, who has recorded the adverse report, for his comments, who shall, within a period not exceeding 45 days from the date of receipt of the representation, furnish his comments to the competent authority or the accepting authority, as the case may be. Sub-rule (4) provides that the competent authority or the accepting authority, as the case may be, shall, within a period of 120 days from the date of expiry of 45 days specified in sub-rule (3), consider the representation alongwith the comments of the appropriate authority and pass speaking orders rejecting or expunging the report wholly or partly. Any order passed under sub-rule (4) shall be communicated in writing to the Government servant concerned. The order passed under sub-rule (4) shall be final. Rule-5 of the aforesaid Rules, 1995 provides the report not to be treated adverse, which reads as under: -

5. ***Report not to be treated adverse:*** *- Except as provided in Rules 56 of the Uttar Pradesh Fundamental Rules contained in Financial Handbook Volume-II, Pars II to IV, where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned.*

4. In the present case, an adverse entry was admittedly not communicated to the petitioner within the period specified under the aforesaid rules rather it was communicated to her after 13 months. Therefore, in view of the provisions contained in Rule-4 of the Rules referred above, the adverse entry cannot be treated as adverse for any purpose in service. The petitioner has wrongly been superseded on account of the adverse entry recorded in the year 2002-03 and hence that adverse entry could not have been taken into account. It is also settled law that an adverse entry which is not communicated cannot be taken into account while considering the candidate for his promotion.

5. Thus, the supersession of the petitioner is illegal. The petitioner has wrongly been superseded on the on the basis of an adverse entry which could not be treated to be adverse in accordance with the Rule-5 of the aforesaid Rules, 1995 and also accordance with the settled decision of the law that an adverse entry which is not communicated shall not be taken into account while considering the promotion.

6. For the reasons recorded above, we direct the respondents to promote the petitioner from the date from which her juniors have been promoted within a period of

one month from the date of production of certified copy of this order.

7. The writ petition is allowed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang